

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

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IN RE Tennessee Coalition of Rural)
Incumbent Telephone Companies And) *Docket No 03-00633*
Cooperatives Request for Suspension of)
Wireline to Wireless Number Portability)
Obligations Pursuant to Section 251 (f)(2)
of the Communications Act of 1934, as
Amended

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc ("AWS") respectfully submits these comments regarding the Petition for Suspension ("Petition") filed December 11, 2003 by the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives on behalf of twenty (20) petitioners (collectively the "Petitioners") identified in the Petition¹ This Petition was filed with the Tennessee Regulatory Authority ("Authority") pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended ("Act")

AWS opposes, to the extent discussed herein, the requests by the rural LECs to obtain a temporary suspension under Section 251(f)(2) of their Section 251(b) obligation to port numbers to wireless carriers AWS especially opposes the open-endedness of the Petitioners' request

¹ The Petitioners are Ardmore Telephone Company, Inc , Ben Lomand Rural Telephone Cooperative, Inc , Bledsoe Telephone Cooperative, CenturyTel of Adamsville, Inc , CenturyTel of Claiborne, Inc , CenturyTel of Ooltewah-Collegedale, Inc , Crockett Telephone Company, Inc , Dekalb Telephone Company, Inc , Highland Telephone Cooperative, Inc , Humphreys County Telephone Company, Loretto Telephone Company, Inc , Millington Telephone Company, North Central Telephone Cooperative, Inc , Peoples Telephone Company, Tellico Telephone Company, Inc , Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc , and Yorkville Telephone Cooperative

The Federal Communications Commission (“FCC”) has clarified the wireline-to-wireless porting obligations in its Intermodal Porting Order released November 10, 2003 as well as in its January 16, 2004 Order, as discussed below.² The rural LECs have long been aware of the obligation to provide LNP to wireless carriers, as all LECs have had LNP obligations since at least December 31, 1999. Any arguments the Petitioners make to the contrary are simply erroneous.³

I. DISCUSSION

The Petition filed in this docket was submitted on behalf of the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives. As discussed further below, the Petition is facially insufficient as federal law requires each company to make its own showing as to whether it qualifies for a suspension of the number porting obligations. Furthermore, the Petitioners seek a “temporary suspension”⁴ under Section 251(f)(2) of their wireline to wireless local number portability (“LNP”) obligations. The Petitioners, however, fail to provide an end date for this “temporary” suspension.⁵

² See Memorandum Opinion & Order & Further Notice of Proposed Rulemaking, In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116, FCC 03-284 (FCC released November 10, 2003) (“Intermodal Porting Order”), Order, In the Matter of Telephone Number Portability, CC Docket No. 95-116, FCC 04-02 (FCC released January 16, 2004) (the “January 16, 2004 Order”).

³ See 47 U.S.C. Section 251(b), *Matter of Telephone Number Portability*, FCC 96-286, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking (1996) at para. 8 (“First LNP Order”) (finding that “LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers”), Letter from John Muleta, Wireless Telecommunications Bureau, FCC, to John T. Scott, III, Verizon Wireless, and Michael F. Altschul, CTIA (Jul. 3, 2003) at 4.

⁴ Petition at 7.

⁵ Petitioners have variously said the following with respect to the “temporary suspension” they are seeking:

- “the Petitioners request that the TRA suspend the requirement to provide number portability in their service areas and further urge the TRA to suspend enforcement of the number portability while the TRA considers the Petition in full.” (Petition at 4 (footnote omitted))
- “[No Petitioner] should be subjected to a requirement to support intermodal number

A. The Authority Must Deny the Suspension Request, as the Petition is Facially Insufficient.

Under 47 U.S.C. §251(f), each petitioner must demonstrate that compliance with the interconnection obligations of the Act would be “technically infeasible” or “economically burdensome” for the carrier, or have “significant, adverse economic impact” on the carrier’s customers. To this end, the FCC, in its *Interconnection Order*, explained that “[s]tate commissions will need to decide on a case-by-case basis” whether the standards for granting an exemption in §251(f) have been met.⁶ FCC rules also require a case-by-case determination.⁷

The Petition submitted by the Coalition does not mention this requirement, nor does it include any company-specific arguments.⁸ The Petition, which discusses only generalities relating to the coalition, fails to comply with federal law. Therefore, the Petition, as filed, is facially insufficient and should be denied.

portability prior to May 24, [2004], the date established by the FCC clearly intended to apply to the smaller carriers.” (Petition at 7)

- “the TRA should first gain experience and insight into the effectiveness of intermodal portability in the more robust urban markets of the State before requiring the Petitioners to undertake the burden of portability deployment.” (Petition at 8)
- “the Petitioners respectfully request that the TRA grant this Petition, and pending resolution of the Petition, immediately suspend enforcement of requirements for the [Petitioners] to support intermodal porting.” (Petition at 15)

⁶ *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Report and Order*, CC Docket Nos. 96-98 and 95-185, FCC 96-325 (August 8, 1996) (*Interconnection Order*), paragraph 1262 (emphasis added).

⁷ See 47 C.F.R. § 51.401.

⁸ Similar coalition-wide general arguments have been made to and essentially rejected by the Authority before. In Docket No. 99-00613, the Southeastern Competitive Carriers Association (“SECCA”) made the same argument in response to another §251(f)(2) petition filed by the Petitioners in this case. Subsequently, the Pre-Hearing Officer in the case issued a Report and Recommendation on February 8, 2000, which framed all the issues in the case in terms of “each member of the Coalition.” The Report and Recommendation was adopted by the Authority in an order issued June 29, 2000.

B. The Petitioners Are Required to Implement Wireline-Wireless LNP Within the Timeframes Established by the FCC.

Under the FCC's Intermodal Porting Order, any LEC that operates *within* the 100 largest MSAs was originally obligated to port numbers to all wireless carriers by November 24, 2003 for any switch for which it received a timely porting request from at least one wireless carrier⁹ Subsequently, however, in its January 16, 2004 Order, the FCC extended this deadline to May 24, 2004 for LECs within the top 100 MSAs with fewer than two percent of the nation's subscriber lines ("Two Percent Carriers"), where the LEC in question had not received a request for LNP (1) from a wireline carrier prior to May 24, 2003, or (2) from a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned¹⁰ The FCC has also determined that wireline carriers *outside* the 100 largest MSAs have until May 24, 2004 to port numbers, upon request, to wireless carriers¹¹ The FCC has thus essentially waived the November 24, 2003 porting deadline for Two Percent Carriers *within* the top 100 MSAs and for all LECs *outside* the 100 largest MSAs, granting all such carriers an extension to May 24, 2004

In light of the foregoing requirements, each Petitioner should be required to specify whether it is a Two Percent Carrier and to provide factual support for such a determination¹² Each Petitioner should also be required to specify whether it operates within and or outside the

⁹ Intermodal Porting Order, ¶ 29, *see also* 47 C F R § 52.23(b)(1)

¹⁰ January 14, 2004 Order, ¶¶ 1, 12

¹¹ Intermodal Porting Order, ¶ 29 Generally, LECs outside the top 100 MSAs must make LNP available within 6 months after a request by another carrier (including wireless carriers) in areas in which the requesting carrier operates or plans to operate 47 C F R § 52.23(c)

¹² The basis for Petitioners' claim for relief is 47 U S C § 251(f)(2), a provision allowing the suspension or modification of 47 U S C § 251(b) obligations for LECs with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide *See* 47 U S C § 251(f)(2) AWS thus assumes that each Petitioner is a Two Percent Carrier, however, the Petition does not contain any factual support for such an assumption

100 largest MSAs

If each Petitioner is a Two Percent Carrier within the top 100 MSAs or is a carrier outside the 100 largest MSAs, each such Petitioner should then be required to specify whether it will withdraw its request for relief in this proceeding in light of the FCC's postponement of its porting obligations until May 24, 2004

AWS opposes any waiver of the LNP porting obligations beyond the waivers to May 24, 2004 already granted by the FCC. Under long-standing timeframes adopted by the FCC, a LEC has a maximum of six (6) months of a request by another telecommunications carrier to make LNP available in switches for which it has received a porting request.¹³ Requiring Petitioners to implement LNP in the switches at issue by May 24, 2004 will have given them more than the maximum six (6) month time period to implement LNP. No further relief should be permitted. These Petitioners' open-ended request for relief should be denied.

C. The Authority Must Deny the Suspension Request, as the Petitioners Have Failed to Show That They Are Entitled to Relief.

To the extent that any Petitioners are seeking waivers of their wireline-wireless LNP implementation obligations beyond the timeframes discussed in the previous section, Petitioners have failed to demonstrate that they are entitled to relief. Furthermore, in the Intermodal Porting Order, the FCC established a high standard for the granting of petitions for waiver of LNP porting obligations:

Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver of their obligation to port numbers to wireless carriers, if they can provide *substantial, credible evidence* that there are special circumstances that warrant departure from existing rules.¹⁴

¹³ See 47 C.F.R. § 52.23(b)(2)(iv) (specifying LNP implementation time frames for LECs within the 100 largest MSAs), (c) (specifying LNP implementation time frames all LECs, including LECs outside the 100 largest MSAs).

¹⁴ Intermodal Porting Order, ¶30 (emphasis added)

The only conceivable basis on which this Authority can suspend a rural LEC's *existing LNP obligation* is by making findings under Section 251(f)(2), which establishes strict guidelines for when a state may suspend or modify a Section 251(b) obligation such as LNP for eligible rural carriers. Specifically, a state may suspend or modify the LNP obligation for a rural LEC only where it is necessary (i) to avoid a significant adverse economic impact on users of telecommunications services generally, (ii) to avoid imposing a requirement that is unduly economically burdensome, or (iii) to avoid imposing a requirement that is technically infeasible. Further, such suspension must be consistent with the public interest, convenience, and necessity.¹⁵

The Petitioners, however, fail to provide sufficient evidence beyond unsupported general statements to satisfy the Section 251(f)(2) criteria, thus, the request for suspension must be denied.

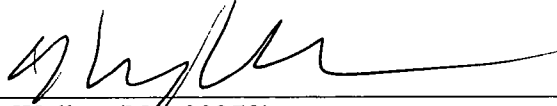
II. CONCLUSION

For the foregoing reasons, AWS respectfully requests that the Authority require each Petitioner to specify whether it is a Two Percent Carrier and to clarify whether it provides service within or outside the largest 100 MSAs. Furthermore, AWS respectfully requests that the Authority require each Petitioner to set forth the date that it will be ready to implement intermodal local number portability, which should be no later than May 24, 2004.

¹⁵ 47 U.S.C. Section 251(f)(2)

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

A handwritten signature in black ink, appearing to read 'H. Walker', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U S Mail, to

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on this the 23rd day of February, 2004



Henry Walker